

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to Investigate the)
Implementation of Feed-in Tariffs.)
_____)

DOCKET NO. 2008-0273

PUBLIC UTILITIES
COMMISSION

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FILED

**TAWHIRI POWER LLC'S
MOTION TO INTERVENE,
DECLARATION OF COUNSEL, VERIFICATION
AND
CERTIFICATE OF SERVICE**

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OF THE STATE OF HAWAII

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TAWHIRI POWER LLC'S MOTION TO INTERVENE

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

MOVANT, TAWHIRI POWER LLC, a Delaware limited liability company ("Movant") hereby moves the Hawaii Public Utilities Commission ("Commission") for an order allowing Movant to intervene as a party, pursuant to Hawaii Revised Statutes § 269-6 and §§ 6-61-41 and 6-61-55 of the Rules of Practice and Procedure before the Public Utilities Commission, Chapter 61 of Title 6 of the Hawaii Administrative Rules ("HAR").

Movant's substantial interests in this Docket are unique and will not be fully and adequately represented unless Movant is allowed to intervene on its own behalf. In addition, Movant has the experience and background to greatly assist the Commission in developing a sound evidentiary record and a set of feed-in tariffs and prices that meets the objectives of the comprehensive agreement entered into on October 20, 2008 by the Governor of the State of Hawaii, the State of Hawaii Department of Business, Economic Development and Tourism, the State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer

Affairs and the Hawaiian Electric Companies ("Comprehensive Agreement").¹ In support of this Motion, Movant states as follows:

1. Procedural History of this Docket.

The Commission initiated this docket by its Order Initiating Investigation filed on October 24, 2008 to address the issues related to implementation of feed-in tariffs in the HECO Companies' service territories ("Order").² In the Order, the Commission named the HECO Companies and the Consumer Advocate as parties to the proceeding and invited any interested individual, entity, agency, or community or business organization, to file a motion to intervene or participate without intervention in the Docket pursuant to HAR Chapter 6-61.³

It is Movant's understanding that no action has commenced in this Docket and that Movant is within the 20-day time period to file a Motion to Intervene pursuant to HAR § 6-61-57(2).

2. Information Concerning Movant.

Movant is a Delaware limited liability company. Movant is a Qualifying Facility ("QF") that has a Power Purchase Agreement with Hawaii Electric Light Company, Inc.⁴ Movant's full name and business address is as follows:

¹ See Order Initiating Investigation in Docket No. 2008-0273. "Hawaii Electric Companies" or "HECO Companies" collectively refer to Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc.

² Id. at 1.

³ Id. at 5-6.

⁴ See The Restated and Amended Power Purchase Contract for As-Available Energy between Hawaii Electric Light Company, Inc. and Apollo Energy Corporation, dated October 13, 2004 (the "RAC"). The RAC was approved by the Commission in Docket No. 04-0346, In the Matter of the Application of Hawaii Electric Light Company, Inc. for Approval of a Restated and Amended Power Purchase Contract with Apollo Energy Corporation, and a Commission determination that the HELCO-Owned Interconnection Facilities can be constructed above the surface of the ground, pursuant to Hawaii Revised Statutes sec. 269-27.6(a). On December 5, 2005, Apollo Energy Corporation's interest under the RAC was assigned to Movant. Consequently, Movant has replaced Apollo Energy Corporation ("Apollo Energy") as a party to the RAC.

Tawhiri Power LLC
551 Pilgrim Drive, Suite D
Foster City, California 94404

All correspondence related to this Docket should be sent to:

Harlan Y. Kimura
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Honolulu, Hawaii 96813

and

Mr. Anthony B. Pace
Tawhiri Power LLC
551 Pilgrim Drive, Suite D
Foster City, California 94404

3. Nature of Movant's Rights.

The Commission in initiating this investigation has invited any interested individual, entity, agency, or community or business organization, to file a motion to intervene or participate without intervention in this Docket. Movant is a QF that sells its wind-generated energy to Hawaii Electric Light Company, Inc. ("HELCO") pursuant to the terms and conditions of the RAC.⁵ Therefore, Movant qualifies as an interested entity and may intervene in this Docket.

4. Nature and Extent of Movant's Property, Financial, or Other Interest.

Movant is a QF that sells its wind generation to HELCO under the RAC.⁶ Pursuant to the terms of the same, Movant is contractually obligated to provide HELCO with energy until 2027 from its Pakini Nui Wind Farm. The rate that Movant receives for its energy sold to HELCO is based on a "rolling" four (4) year average of HELCO's "on-peak and off-peak avoided energy

⁵ Id.

⁶ Id.

costs . . . which are filed with the PUC pursuant to Subchapter 3, Rule 6-74-17(b) of the PUC's Standards, as may be amended from time to time or as may be superseded by applicable laws, rules, or PUC orders, at the time the energy is delivered."⁷

The instant Docket may adversely affect Movant's property and financial rights because this investigative proceeding will:

determine the best design for feed-in tariffs that support the Hawaii Clean Energy Initiative, considering such factors as categories of renewables, sizes or locational limits for projects qualifying for the feed-in tariff, how to manage and identify project development milestones relative to the queue of projects wishing to take the feed-in tariff terms, what annual limits should apply to the amount of renewables allowed to take the feed-in tariff terms, what factors to incorporate into the prices set for feed-in tariff payments, and the terms, conditions, and duration of the feed-in tariff that shall be offered to all qualifying renewable projects . . .⁸

If the calculation of the energy rate paid to Movant pursuant to the contemplated feed-in tariffs is less than the amount it receives under the RAC, Movant's ability to operate in an economically feasible manner will be placed in jeopardy.⁹ Therefore, Movant should be granted intervention to protect its property and financial rights.

5. The Effect of the Pending Order as to Movant's Interest.

If the Commission concludes that Movant is subject to feed-in tariffs, it may affect the amount that it is paid for its wind energy sold to HELCO. If the rates are decreased and Movant incurs a loss, given the other challenges that face Movant, such a decrease could force it into a

⁷ See Paragraph 3 of Appendix D of the RAC.

⁸ See *Order Initiating Investigation*, filed on October 24, 2008, in Docket No. 2008-0273: *In the Matter of Public Utilities Commission Instituting a Proceeding to Investigate the Implementation of Feed-in Tariffs* at 3.

⁹ Movant's ability to operate in an economically feasible manner has already been put in jeopardy with the Commission's approval of the Parties' Stipulation to discard the Proxy Method and to utilize P-Month, a PC-based production simulation model. See, Docket No. 7310: *In the Matter of the Public Utilities Commission Instituting a Proceeding to Investigate the Proxy Method and the Proxy Method Formula Used to Calculate Avoided Energy Costs and Schedule Q Rates of the Electric Utilities in the State of Hawaii*. Pursuant to D&O 24086 in Docket No. 7310, the Movant is currently attempting to resolve its disputes informally with HELCO concerning the P-Month Methodology, but has retained its right to file a written request with the Commission to assist in any unresolved issues.

position that would severely affect it and the goals of the Comprehensive Agreement; specifically the HECO Companies commitment “to integrating the maximum attainable amount of wind energy on their systems.”¹⁰

6. Other Means Available Whereby Movant’s Interests May be Protected.

Movant has no other means but intervention to protect its unique property and financial interests. To not grant Movant’s Motion to Intervene would deny it of its due process rights.

7. Extent to Which Movant’s Interests Would be Represented by Existing Parties.

The Movant’s interests cannot be fully represented by any of the existing parties in the Docket because none of those parties share the same property and financial interests as Movant. Neither the HECO Companies nor the Consumer Advocate currently have a Power Purchase Agreement to provide energy to a regulated utility at a price based on a “rolling” four (4) year average of HELCO’s on-peak and off-peak avoided energy cost data which is governed by the applicable rate schedule filed with the Commission. In addition, neither the HECO Companies nor the Consumer Advocate would be the recipients of feed-in tariff payments. They clearly do not share Movant’s interest in protecting its property and financial interests to ensure that it may continue to provide renewable wind energy to HELCO in an economically viable manner and to promote wind energy in the State of Hawaii.

8. Movant’s Intervention Will Assist in the Development of a Sound Evidentiary Record.

Movant has provided HELCO with renewable wind energy since 2007 possesses the experience and background needed to assist the Commission in developing a sound and accurate

¹⁰ See, Comprehensive Agreement at 3.

evidentiary record. Consequently, permitting Movant to intervene would ensure the Commission's decisions being just and reasonable, and meet the objectives of the Comprehensive Agreement to promote wind energy in Hawaii.¹¹

9. Extent to Which the Movant's Intervention Would Broaden the Issues or Delay the Proceedings.

Movant's intervention will not unduly broaden the issues or unduly delay the proceedings. In fact, Movant offers a unique perspective to this Docket because: (a) it has been providing HELCO with renewable wind energy since 2007; (b) its Managing Member, Apollo Energy, has been a part of the renewable wind energy community in Hawaii since 1994¹²; and (c) its principals have a long history and commitment of bringing renewable wind energy to Hawaii.¹³ Therefore, as an active Intervenor, Movant will be able to assist the Commission in formulating its decisions in a timely, just and reasonable manner. Moreover, Movant seeks to ensure a comprehensive examination of the issues involved in this Docket is made in order to meet the objectives of the historic Comprehensive Agreement.

10. Movant's Interests Compared to the General Public.

The Movant has unique property and financial interests; and an intimate knowledge of being a QF providing renewable wind energy to HELCO under its RAC since 2007. Furthermore, its principals have been involved with the renewable wind energy community in Hawaii since 1983. None of these attributes of Movant is shared by the general public.

¹¹ Movant's predecessor (i.e. Apollo Energy) began negotiations with HELCO to provide wind power in 1999. Thus, Movant is very familiar with the HELCO Companies facilities and Operations and the Hawaii Energy Community.

¹² Apollo Energy owned and operated the Kamao'a Wind Farm located in at South Point Area on the Island of Hawaii since 1994.

¹³ The principals of both Movant and Apollo Energy were involved with the prior owners of the Kamao'a Wind Farm since 1983.

11. Movant's Position.


Movant as a QF providing renewable wind energy to HELCO at rates filed with the Commission has vital property and financial interests requiring it be made a party in this Docket. Exclusion of Movant from participation herein would deny it of its substantive due process rights. Additionally, the ability of Movant to continue to provide renewable wind energy to HELCO and jobs to its employees on the Big Island depends on receiving a fair and reasonable rate for its renewable wind energy, and an opportunity to be heard when government agencies take actions that may adversely affect its property and financial rights. Therefore, it is essential that Movant be allowed to intervene as a party in this Docket. Alternatively, if the Commission is not inclined to grant Movant intervenor status, Movant respectfully moves the Commission to at least grant it Participant status and permit it to submit Position Statements and/or Testimony.

Movant does not request a hearing on this Motion.

CONCLUSION

WHEREFORE, Movant respectfully moves the Commission to grant its Motion to Intervene, or, alternatively, to grant it Participant status and permit it to submit Position Statements and/or Testimony.

DATED: Honolulu, Hawaii, November 13, 2008.



HARLAN Y. KIMURA
Attorney for Movant
Tawhiri Power LLC

STATE OF HAWAII)
) ss
CITY AND COUNTY OF HONOLULU)

1. I am counsel of record for Movant Tawhiri Power LLC with respect to its Motion To Intervene attached hereto, and made this declaration based upon personal knowledge gained in that capacity.

3. The original of the Verification is being sent by Mr. Pace from Foster City, California, via courier to the undersigned (hereinafter "Original"). Upon receipt of the Original, I will immediately file the same in this Docket under separate cover.

17. _____
HARLAN Y. KIMURA

VERIFICATION

STATE OF CALIFORNIA

COUNTY OF San Mateo

SS.

Anthony B. Pace, being first duly sworn, deposes and says: I am the Chief Executive Officer of Apollo Energy Corp. and Apollo Energy Corp. is the Managing Member of Tawhiri Power, LLC; that I have read the foregoing Motion to Intervene and that the same are true and correct to the best of my knowledge and that I have the authority to sign on behalf of Tawhiri Power, LLC.


ANTHONY B. PACE

Subscribed and sworn to before me
This 11TH day of NOVEMBER, 2008


Name of Notary Public:

Notary Public, State of California

My commission expires: OCT. 15, 2009



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was duly served on each of the following parties via hand delivery or United States Mail, postage prepaid, as set forth below:

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(Via hand-delivery)
(2 Copies)

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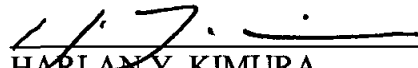
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DATED: Honolulu, Hawaii, November 13, 2008.



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